

## BOARD OF REVIEW DECISION

**Title of publication:** 20191228\_144735

**Other known title(s):** Not stated

**OFLC ref:** 2000042.016

**Medium:** Video File

**Creator:** Not stated

**Country of origin:** United Kingdom

**Language:** English

**Applicant:** Graham Snell

|                        |                |
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| <b>Classification:</b> | Objectionable. |
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**Excisions:** No excisions recommended

**Descriptive note:** None

**Display conditions:** None

**Date of entry in Register:** 17 July 2020

**Date of direction to issue a label:** No direction to issue a label has been issued

**Date of notice of decision:** 10 July 2020

|                            | Components      | Running time |
|----------------------------|-----------------|--------------|
| <b>Timed component(s):</b> | 20191228_144735 | 0:37         |
| <b>Total running time:</b> |                 | 0:37         |

### Summary of reasons for decision:

This was an application to the Board under section 47(2)(d) of the Films, Videos and Publications Classification Act 1993 (the Act) by the Applicant for a review of the decision of the Office of Film and Literature Classification (the Classification Office) dated 9 April 2020.

The publications consisted of twenty videos, depicting a young woman engaged in various sexual activities (female on male oral sex, digital penetration, and full penetrative sex) and/or in an apparently intoxicated state, with a disembodied voice directing her and providing commentary on what is happening in each video. The owner of the voice is never seen, save for his erect genitalia. Some of the videos are double-ups, with a

shorter version being provided of a longer version. In some of the videos the young woman is nude, in some she is partially dressed (in a school kilt), and in others she does make-up and is dressed either in a t-shirt and underwear, or in a black PVC mini-dress. Reference is made in a number of the videos to the young woman being 13 years, despite her actual age being 17 years. She appeared in the videos to be around 13 years.

Each video was considered individually.

In its decision, the Board classified all twenty publications as objectionable under the Act. It held that the publications must be deemed objectionable in terms of section 3(2)(a) of the Act because they promote or support, or tend to promote or support, the exploitation of children for sexual purposes.

The Board also held that even had it not decided that the publications be deemed objectionable, it would have determined them to be objectionable under section 3(3)(a), (b), (c) and (d) because they, variously, depicted sexual conduct with a young person, exploited the nudity of a young person, were demeaning, and/or promoted or encouraged the criminal act of incest (sexual activity between father and daughter).

When making a determination under section 3(3), the Board was required to consider whether the availability of the publications is likely to be injurious to the public good. The Board found they were likely to be so injurious because they seek to normalise the making of pornographic videos with young persons. The making of videos between two consenting adults for their own use, or even to be viewed by others, is not unlawful. However, what will tip such publications over into the realm of objectionability is when those videos cross the line into seeking to normalise sexual conduct with children or young persons or to promote or encourage such sexual conduct and, in this case, prohibited sexual activity between father and daughter.

The Board is well aware of its obligations to take account of the Bill of Rights Act right to the freedom of expression but considered that, for the reasons set out in its decision, its findings with respect to the publications the subject of this review are a demonstrably justified limitation on that right.